

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**


ALVIN MAURICE HAILEY	:	CIVIL ACTION
	:	
v.	:	NO. 19-2171
	:	
C.O. FRED BEARD, et al.	:	

ORDER

AND NOW, this 29th day of October 2019, upon considering the Defendants' Motion to dismiss and for summary judgment on exhaustion (ECF Doc. No. 18), *pro se* Plaintiff's Responses (ECF Doc. Nos. 26, 27), and for reasons in the accompanying Memorandum, it is **ORDERED** Defendants' Motion (ECF Doc. No. 18) is **GRANTED in part** and **DENIED in part**:

1. We **DENY** summary judgment as there are genuine issues of fact concerning availability of Plaintiff's grievance procedure;
2. We **DENY** dismissal of the Plaintiff's Fourteenth Amendment claims against Defendant Beard and a failure to protect claim against Defendant Algarin;
3. We **GRANT** Defendants' Motion to dismiss Fourteenth Amendment claims against Major Carbo, Major Brown, Captain Smith, Lieutenant Zerr, Captain Berger, and Officer Errington without prejudice;
4. We **dismiss** Plaintiff's references to Pennsylvania state law claims for collusion and emotional distress as failing to state a claim without prejudice;
5. Plaintiff is granted **leave** to file a second amended Complaint consistent with the accompanying Memorandum to possibly plead specific facts giving rise to claims for failure to protect and possible Pennsylvania state claims **no later than November 29, 2019**; and,

6. Absent the timely filing of a second amended Complaint, Defendants shall answer all remaining allegations no later than **December 10, 2019**.



KEARNEY, J.